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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,850	11/02/2001	Sreekumar Pillai	J6673(C)	6359

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UNILEVER PATENT GROUP
800 SYLVAN AVENUE
AG West S. Wing
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER	
KANTAMNENI, SHOBHA	
ART UNIT	PAPER NUMBER
1617	

MAIL DATE	DELIVERY MODE
11/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/003,850	**Applicant(s)** PILLAI ET AL.	
	Examiner Shobha Kantamneni	**Art Unit** 1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *NONE*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,2,5,6,9 and 10*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See page 2.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Shengjun Wang/
Primary Examiner, Art Unit 1617

Continuation of 11: Applicant's arguments have been considered, but not found persuasive as discussed in the previous office actions and those found below. All rejections made in the final office action are MAINTAINED.

Applicant argues that "No separation of ingredients is even remotely suggested in the '139 reference. The '373 reference mentions the use of isoflavonoids and the '179 reference mentions the use of phosphatidylcholine and glycyrretinic acid. The '555 reference discloses oil- in-water emulsions with retinoids and the '116 reference describes a treatment regime for skin. Again, a dual component system having a first component with retinoid and a second component with a retinoid booster and a phytoestrogen is not, even remotely, suggested by the references". These arguments have been considered, but not found persuasive. Granger et al. teach a skin conditioning composition comprising a compound selected from retinal or retinyl ester in an amount from about 0.001% to about 10 %, in combination with a retinoid booster, polycyclic triterpene carboxylic acid, glycyrretinic acid in an amount from about 0.0001% to about 50%. From the teachings of Gorbach, it would have been obvious to a person of ordinary skill in the art at the time of invention to employ phytoestrogens such as genistein, diadzein in combination with retinoids, and glycyrretinic taught by Granger for treating wrinkles. It is generally considered a prima facia obvious to combine compounds each of which are taught by the prior art to be useful for the same purpose, in order to form a composition, which is used for the very same purpose. Suares et al. teaches that skin care compositions are kept separate because single formulations often compromise the performance of the severally combined actives see column 1, lines 15-25, in particular. Further, Suares et al. teaches the employment of a dual container system that allows two compositions to be separated from one another, to maximize the effectiveness of the separate compositions, while also allowing for application of both compositions from a single product, and also provides an example wherein one composition contains retinoid, and a second composition contains genistein. Liu et al. teaches that retinol or retinyl esters are known to be supplied in two bottles or two portions to separate retinoids from other cosmetic ingredients to keep retinoids from chemical reactions with other ingredients. Accordingly, from the teachings of Suares et al., and Liu there is clear motivation to provide a composition comprising retinoid in a first compartment, and a second composition comprising retinoid booster and phytoestrogen in a second compartment, where the first and second compartments are joined together i.e retinoids are kept separate from other actives for stability reasons. The references '139, '373 render the claimed invention obvious in combination with '555, '116. Particularly, '116 teaches a stable skin care product that has two compositions that are isolated from each other in different compartments prior to use in the abstract and column 2; lines 1-14. More particularly, '116 teaches that the two compositions are kept separate because single formulation often compromise the performance of the severally combined actives (see abstract and column 2; lines 1-14).

Further, regarding the recitation "wherein the booster potentiates the action of the retinoid and inhibits degradation of retinoic acid", and the recitation that the components of the second composition act as "boosting the first benefit", as recited in the claims, it is noted that the boosting activity and inhibition of degradation of retinoic acid by a compound are properties thereof. It is pointed out again that a product and its properties are inseparable. In re Papesch, 315 F.2d 381,137 USPQ 43 (CCPA 1963). Accordingly, the composition rendered obvious by the combined references would, absent evidence to the contrary, meet the limitations pertaining to the retinoid boosting activity of the compound, and inhibition of degradation of retinoic acid by the compound used therein.